

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 05-0136V

Filed: March 8, 2013

Not to be Published

LAURA HOLT, parent of
ALEIGHA HOLT-TIPTON, a minor,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Stipulation; Interim Attorney Fees
and Costs.

Andrew Donald Downing, Esq., Rhodes, Hieronymus, et al., Tulsa, OK, for petitioner.
Alexis Babcock, Esq., US Dept. of Justice, Washington, DC, for respondent.

DECISION on INTERIM ATTORNEY FEES and COSTS¹

Vowell, Special Master:

On January 21, 2005, Laura Holt ["petitioner"] filed a petition² for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq*³ ["Vaccine Act" or "Program"] on behalf of her daughter, Aleigha Holt-Tipton ["Aleigha"]. An entitlement hearing was held on February 13-15, 2013.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² Petitioner filed a Short-Form "Petition for Vaccine Compensation" as authorized under Autism General Order #1, filed July 3, 2002, Exhibit A, Master Autism Petition for Vaccine Compensation at 2.

³ The National Vaccine Injury Compensation Program ["Vaccine Program"] is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended,

On March 8, 2013, the parties filed a Stipulation of Fact Concerning Interim Attorneys' Fees and Costs ["Stipulation"]. Petitioner initially sought an award of \$135,957.22 in attorney fees and costs for petitioner's current counsel⁴ and \$3,730.00 in attorney fees and costs for petitioner's former counsel, Conway, Homer & Chin-Caplan. Stipulation at 1. After informal discussions, the parties agreed upon a lower amount, \$120,000.00, in attorney fees and costs for petitioner's current counsel.⁵ *Id.* at 2. In lieu of filing a General Order #9 Statement, petitioner's counsel represents that petitioner incurred no personal litigation costs. *Id.*

Respondent maintains that the express language of § 15(e)(1) does not confer Special Masters with the authority to award interim attorney fees and costs, but has waived her objection "for purposes of this case only." Stipulation at 1-2.

I find that petitioner is entitled to an award of interim attorney fees and costs under the facts and circumstances of this case, and that the agreed upon amount is reasonable. **Accordingly, I hereby award the total amount of \$123,730.00 as follows:**

- **a lump sum of \$120,000.00, in the form of a check payable jointly to petitioner and petitioner's counsel, Andrew Donald Downing; and**
- **a lump sum of \$3,730.00, in the form of a check payable jointly to petitioner and petitioner's former counsel, Conway, Homer & Chin-Caplan.**

In the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment accordingly.⁶

IT IS SO ORDERED.

s/Denise K. Vowell
Denise K. Vowell
Special Master

42 U.S.C. § 300aa-10 et seq. (2006). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

⁴ This amount includes all attorney fees and costs incurred to the present time, except for the cost of Dr. Kendall's airfare, hotel, and meal expenses and the cost of Dr. DeMio's fees and expenses. Stipulation at 1 n.1. Petitioner will request those costs in her final application for fees and costs. *Id.*

⁵ Again, this amount does not include the costs listed in note 4. Stipulation at 2.

⁶ Entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review. See Vaccine Rule 11(a).